

ANDREW R. KELLY ET AL.

IBLA 81-620

Decided August 20, 1981

81-630

81-637

Appeals from decisions by the Alaska State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers (F 9951, F 9952, F 9953, F 9954, F 10074, F 10075, F 10518, F 10519).

Affirmed.

1. Oil and Gas Leases: Lands Subject to

Noncompetitive oil and gas offers to lease lands within National Petroleum Reserve-Alaska are properly rejected.

APPEARANCES: Andrew R. Kelly, Helen L. Atkinson, Frank J. Novosel, and Patricia Y. Novosel, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Andrew R. Kelly, Helen L. Atkinson, Frank J. Novosel, and Patricia Y. Novosel, appealed from decisions of the Alaska State Office, Bureau of Land Management (BLM), which rejected their separate noncompetitive oil and gas offers to lease for lands within what is now the National Petroleum Reserve-Alaska (NPR-A). 1/

On November 27 and December 12, 1968, appellants filed their noncompetitive oil and gas lease offers. In decisions dated April 3, 1981, the BLM cited the Appropriations Act (P.L. 96-514), which provides that lands within NPR-A may only be leased competitively for oil and gas and, therefore, rejected the offers.

1/ Andrew R. Kelly and Helen L. Atkinson filed noncompetitive oil and gas lease offers F 10518 and F 10519. Frank J. Novosel filed F 9951, F 9954, F 10074, and F 10075. Patricia Y. Novosel filed F 9952 and F 9953.

As grounds for their appeals appellants cited Exec. Order No. 3797-A (Feb. 27, 1923), which established the Naval Petroleum Reserve Number 4, Alaska (Pet. 4) and provided that in cases where the barrier reef is over 3 miles offshore the boundary shall be the highest high water mark of the coast of the mainland. Appellants contend that the sites of the lease offers are over 3 miles distant from the mainland and that since no public land order has been written to change the boundary description referenced above, the lease offers are valid because they were made in areas outside of NPR-A.

Under Exec. Order No. 3797-A the original boundaries of Pet. 4 were established. The area became the National Petroleum Reserve in Alaska (NPR-A) by section 102 of the Act of April 5, 1976, 90 Stat. 303, 42 U.S.C. § 6502 (1976). The coastline to be followed is that of the oceanside of the sandspits and islands forming the barrier reefs and extending across small lagoons from point to point, where such barrier reefs are not over 3 miles offshore, except in the case of Plover Islands from Point Tangent to Point Barrow, where it shall be the highest high water mark on the outer shore of the islands forming the group and extending between the most adjacent points of these islands and the sandspits at either end. In cases where the barrier reef is over 3 miles offshore the boundary shall be the highest high water mark of the coast of the mainland.

The areas described in the lease offers are located on spits of land extending from the mainland. Although some of the areas where the offers are located are more than 3 miles from some points of the mainland, the sandspits or barrier islands themselves are sufficiently contiguous with the mainland such that the coastline to be followed in determining the borders of NPR-A is the oceanside of these spits or islands. The noncompetitive offers, therefore, were made for lands located within NPR-A.

The Tidelands Act, 43 U.S.C. § 1301(a) (1976), defines "lands beneath navigable waters" as all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line 3-geographical miles distant from the coastline of each state. That chapter does not purport to effect rights beyond the 3-mile limit of the territorial sea. State of Alaska v. Bundrant, Alaska 1976, 546 P.2d 530, rehearing denied, 547 P.2d 838; Uri v. State of Alaska, appeal dismissed for want of jurisdiction, 429 U.S. 806 (1976).

Even if the subject noncompetitive oil and gas lease offers were made in areas beyond the 3-mile limit and therefore outside of NPR-A, as contended by appellants, their location would subject them to the provisions of the Outer Continental Shelf Lands Act Amendments of 1978, 92 Stat. 631. Section 205 of that Act, 43 U.S.C. § 1337 (Supp. II 1978), authorizes the Secretary to grant only to the highest responsible qualified bidder or bidders, by competitive bidding, any oil and gas lease of the outer continental shelf.

The Secretary, therefore, has no authority to issue noncompetitive oil and gas leases either within NPR-A or under the Outer Continental Shelf Lands Act. Accordingly, the subject offers must be rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

